

Senate Bill 44

By: Senator Hamrick of the 30th

AS PASSED

AN ACT

To amend Code Section 42-2-11 of the Official Code of Georgia Annotated, relating to powers and duties of the Board of Corrections, so as to authorize the board to enter into contracts for the operation of private probation detention and diversion centers; to provide for rules and regulations for the operation of such centers; to amend Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, so as to provide for probation services for persons convicted of misdemeanors provided by local governments or private corporations, enterprises, and entities; to provide standards for agreements regarding probation services provided by counties, municipalities, or consolidated governments; to provide standards for probation officers employed by counties, municipalities, or consolidated governments; to provide for definitions; to provide for rules and regulations; to change provisions relating to criminal record checks of probation officers; to provide for exceptions; to provide for reports; to prohibit certain activities by probation officers, probation employees, and other employees of counties, municipalities, and consolidated governments; to provide for confidentiality of certain records; to provide for registration; to remove a requirement for general liability insurance for private corporations, enterprises, and entities providing probation services; to provide for related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 42-2-11 of the Official Code of Georgia Annotated, relating to powers and duties of the Board of Corrections, is amended by adding a new subsection (i) to read as follows:

"(i) The board shall have the authority to request bids and proposals and to enter into contracts for the operation of probation detention centers by private companies and entities for the confinement of probationers under Code Section 42-8-35.4 and probation diversion centers for the confinement of probationers under Code Section 42-8-35.5. The board shall have the authority to adopt, establish, and promulgate rules and regulations for the

operation of probation detention and probation diversion centers by private companies and entities."

SECTION 2.

Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, is amended by striking Article 6, relating to agreements for probation services, and inserting in lieu thereof the following:

"ARTICLE 6

42-8-100.

(a) As used in this article, the term:

(1) 'Council' means the County and Municipal Probation Advisory Council created under Code Section 42-8-101.

(2) 'Private probation officer' means a probation officer employed by a private corporation, private enterprise, private agency, or other private entity that provides probation services.

(3) 'Probation officer' means a person employed to supervise defendants placed on probation by a county or municipal court for committing an ordinance violation or misdemeanor.

(b) Any county or municipal court which has original jurisdiction of ordinance violations or misdemeanors and in which the defendant in such a case has been found guilty upon verdict or any plea may, at a time to be determined by the court, hear and determine the question of the probation of such defendant.

(c) If it appears to the court upon a hearing of the matter that the defendant is not likely to engage in an unlawful course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court in its discretion shall impose sentence upon the defendant but may stay and suspend the execution of the sentence or any portion thereof or may place him or her on probation under the supervision and control of a probation officer for the duration of such probation, subject to the provisions of this Code section. The period of probation or suspension shall not exceed the maximum sentence of confinement which could be imposed on the defendant.

(d) The court may, in its discretion, require the payment of a fine or costs, or both, as a condition precedent to probation.

(e) The sentencing judge shall not lose jurisdiction over any person placed on probation during the term of his or her probated sentence. The judge is empowered to revoke any or all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed advisable by the judge, modify or change the probated sentence at any time during the period of time originally prescribed for the probated sentence to run.

(f) If a defendant is placed on probation pursuant to this Code section by a county or municipal court other than one for the county or municipality in which he or she resides for committing any ordinance violation or misdemeanor, such defendant may, when specifically ordered by the court, have his or her probation supervision transferred to the county or municipality in which he or she resides.

(g)(1) The chief judge of any court within the county, with the approval of the governing authority of that county, is authorized to enter into written contracts with corporations, enterprises, or agencies to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in that court and placed on probation in the county. In no case shall a private probation corporation or enterprise be charged with the responsibility for supervising a felony sentence. The final contract negotiated by the chief judge with the private probation entity shall be attached to the approval by the governing authority of the county to privatize probation services as an exhibit thereto. The termination of a contract for probation services as provided for in this subsection entered into on or after July 1, 2001, shall be initiated by the chief judge of the court which entered into the contract, and subject to approval by the governing authority of the county which entered into the contract and in accordance with the agreed upon, written provisions of such contract. The termination of a contract for probation services as provided for in this subsection in existence on July 1, 2001, and which contains no provisions relating to termination of such contract shall be initiated by the chief judge of the court which entered into the contract, and subject to approval by the governing authority of the county which entered into the contract and in accordance with the agreed upon, written provisions of such contract.

(2) The chief judge of any court within the county, with the approval of the governing authority of that county, is authorized to establish a county probation system to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in that court and placed on probation in the county.

(h)(1) The judge of the municipal court of any municipality or consolidated government of a municipality and county of this state, with the approval of the governing authority of that municipality or consolidated government, is authorized to enter into written contracts with private corporations, enterprises, or agencies to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed and any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation. The final contract negotiated by the judge with the private probation entity shall be attached to the approval by the governing authority of the municipality or consolidated government to privatize probation services as an exhibit thereto.

(2) The judge of the municipal court of any municipality or consolidated government of a municipality and county of this state, with the approval of the governing authority of that municipality or consolidated government, is authorized to establish a probation system to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed and any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation.

42-8-101.

(a) There is created the County and Municipal Probation Advisory Council, to be composed of one superior court judge designated by The Council of Superior Court Judges of Georgia, one state court judge designated by The Council of State Court Judges of Georgia, one municipal court judge designated by the Council of Municipal Court Judges of Georgia, one sheriff appointed by the Governor, one probate court judge designated by The Council of Probate Court Judges of Georgia, one magistrate designated by the Council

of Magistrate Court Judges, the commissioner of corrections or his or her designee, one public probation officer appointed by the Governor, one private probation officer or individual with expertise in private probation services by virtue of his or her training or employment appointed by the Governor, one mayor or member of a municipal governing authority appointed by the Governor, and one county commissioner appointed by the Governor. Members of the council appointed by the Governor shall be appointed for terms of office of four years. With the exceptions of the public probation officer, the county commissioner, the sheriff, the mayor or member of a municipal governing authority, and the commissioner of corrections, each designee or representative shall be employed in their representative capacity in a judicial circuit operating under a contract with a private corporation, enterprise, or agency as provided under Code Section 42-8-100. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment. In the event of death, resignation, disqualification, or removal for any reason of any member of the council, the vacancy shall be filled in the same manner as the original appointment and any successor shall serve for the unexpired term. Such council shall promulgate rules and regulations regarding contracts or agreements for the provision of probation services and the conduct of business by private entities providing probation services and county, municipal, or consolidated governments establishing probation systems as authorized by this article.

(b) The business of the council shall be conducted in the following manner:

- (1) The council shall annually elect a chairperson and a vice chairperson from among its membership. The offices of chairperson and vice chairperson shall be filled in such a manner that they are not held in succeeding years by representatives of the same component (law enforcement, courts, corrections) of the criminal justice system;
- (2) The council shall meet at such times and places as it shall determine necessary or convenient to perform its duties. The council shall also meet on the call of the chairperson or at the written request of three of its members;
- (3) The council shall maintain minutes of its meetings and such other records as it deems necessary; and
- (4) The council shall adopt such rules for the transaction of its business as it shall desire and may appoint such committees as it considers necessary to carry out its business and duties.

(c) Members of the council shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each

day such member of the council is in attendance at a meeting of such council, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal motor vehicle in connection with such attendance as members of the General Assembly receive. Payment of such expense and travel allowance shall be subject to availability of funds and shall be in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance.

(d) The council is assigned to the Administrative Office of the Courts for administrative purposes only in accordance with Code Section 50-4-3. The funds necessary to carry out the provisions of this article shall come from funds appropriated to the Administrative Office of the Courts or otherwise available to the council. The council is authorized to accept and use grants of funds for the purpose of carrying out the provisions of this article.

(e) The council shall have the following powers and duties:

- (1) To promulgate rules and regulations for the administration of the council, including rules of procedure for its internal management and control;
- (2) To review the uniform professional standards for private probation officers and uniform contract standards for private probation contracts established in Code Section 42-8-102 and submit a report with its recommendations to the General Assembly;
- (3) To promulgate rules and regulations to implement those uniform professional standards for probation officers employed by a governing authority of a county, municipality, or consolidated government that has established probation services and uniform agreement standards for the establishment of probation services by a county, municipality, or consolidated government established in Code Section 42-8-102;
- (4) To promulgate rules and regulations establishing a 40 hour initial orientation for newly hired private probation officers and for 20 hours per annum of continuing education for private probation officers, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a probation or parole officer basic course of training certified by the Georgia Peace Officer Standards and Training Council or any private probation officer who has been employed by a private probation corporation, enterprise, or agency for at least six months as of July 1, 1996;
- (5) To promulgate rules and regulations establishing a 40 hour initial orientation for probation officers employed by a county, municipality, or consolidated government that has established probation services and for 20 hours per annum of continuing education for such probation officers, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a probation or parole officer basic

course of training certified by the Georgia Peace Officer Standards and Training Council or any probation officer who has been employed by a county, municipality, or consolidated government as of March 1, 2006;

(6) To promulgate rules and regulations relative to compliance with the provisions of this article, and enforcement mechanisms that may include, but are not limited to, the imposition of sanctions and fines and the voiding of contracts or agreements;

(7) To promulgate rules and regulations establishing registration for any private corporation, private enterprise, private agency, county, municipality, or consolidated government providing probation services under the provisions of this article, subject to the provisions of Code Section 42-8-107;

(8) To produce an annual summary report. Such report shall not contain information identifying individual private corporations, nonprofit corporations, or enterprises or their contracts; and

(9) To promulgate rules and regulations requiring criminal record checks of private probation officers registered under this Code section and establishing procedures for such criminal record checks. The Administrative Office of the Courts on behalf of the council shall conduct a criminal records check for probation officers as provided in Code Section 35-3-34. No applicant shall be registered who has previously been convicted of a felony. The council shall promulgate rules and regulations regarding registration requirements, including restrictions regarding misdemeanor convictions. An agency or private entity shall also be authorized to conduct a criminal history background check of a person employed as a probation officer or an applicant for a probation officer position. The criminal history check may be conducted in accordance with Code Section 35-3-34 and may be based upon the submission of fingerprints of the person whose records are requested. The Georgia Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records. The federal record, if any, shall be obtained and returned to the requesting entity or agency.

42-8-102.

(a) The uniform professional standards contained in this subsection shall be met by any person employed as and using the title of a private probation officer or probation officer. Any such person shall be at least 21 years of age at the time of appointment to the position of private probation officer or probation officer and must have completed a standard

two-year college course or have four years of law enforcement experience; provided, however, that any person employed as a private probation officer as of July 1, 1996, and who had at least six months of experience as a private probation officer or any person employed as a probation officer by a county, municipality, or consolidated government as of March 1, 2006, shall be exempt from such college requirements. Every private probation officer shall receive an initial 40 hours of orientation upon employment and shall receive 20 hours of continuing education per annum as approved by the council, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a probation or parole officer basic course of training certified by the Peace Officer Standards and Training Council or any private probation officer who has been employed by a private probation corporation, enterprise, or agency for at least six months as of July 1, 1996, or any person employed as a probation officer by a county, municipality, or consolidated government as of March 1, 2006. In no event shall any person convicted of a felony be employed as a probation officer or utilize the title of probation officer.

(b) The uniform contract standards contained in this subsection shall apply to all private probation contracts executed under the authority of Code Section 42-8-100. The terms of any such contract shall state, at a minimum:

- (1) The extent of the services to be rendered by the private corporation or enterprise providing probation supervision;
- (2) Any requirements for staff qualifications, to include those contained in this Code section as well as any surpassing those contained in this Code section;
- (3) Requirements for criminal record checks of staff in accordance with the rules and regulations established by the council;
- (4) Policies and procedures for the training of staff that comply with rules and regulations promulgated by the council;
- (5) Bonding of staff and liability insurance coverage;
- (6) Staffing levels and standards for offender supervision, including frequency and type of contacts with offenders;
- (7) Procedures for handling the collection of all court ordered fines, fees, and restitution;
- (8) Procedures for handling indigent offenders to ensure placement of such indigent offenders irrespective of the ability to pay;
- (9) Circumstances under which revocation of an offender's probation may be recommended;
- (10) Reporting and record-keeping requirements; and

(11) Default and contract termination procedures.

(c) The uniform contract standards contained in this subsection shall apply to all counties, municipalities, and consolidated governments that enter into agreements with a judge to provide probation services under the authority of Code Section 42-8-100. The terms of any such agreement shall state at a minimum:

(1) The extent of the services to be rendered by the local governing authority providing probation services;

(2) Any requirements for staff qualifications, to include those contained in this Code section;

(3) Requirements for criminal record checks of staff in compliance with the rules and regulations established by the council;

(4) Policies and procedures for the training of staff that comply with the rules and regulations established by the council;

(5) Staffing levels and standards for offender supervision, including frequency and type of contacts with offenders;

(6) Procedures for handling the collection of all court ordered fines, fees, and restitution;

(7) Circumstances under which revocation of an offender's probation may be recommended;

(8) Reporting and record-keeping requirements; and

(9) Default and agreement termination procedures.

(d) The council shall review the uniform professional standards and uniform contract and agreement standards contained in subsections (a), (b), and (c) of this Code section and shall submit a report on its findings to the General Assembly. The council shall submit its initial report on or before January 1, 2007, and shall continue such reviews every two years thereafter. Nothing contained in such report shall be considered to authorize or require a change in the standards without action by the General Assembly having the force and effect of law. This report shall provide information which will allow the General Assembly to review the effectiveness of the minimum professional standards and, if necessary, to revise these standards. This subsection shall not be interpreted to prevent the council from making recommendations to the General Assembly prior to its required review and report.

42-8-103.

(a) Any private corporation, private enterprise, or private agency contracting to provide probation services or any county, municipality or consolidated government entering into

an agreement under the provisions of this article shall provide to the judge with whom the contract or agreement was made and the council a quarterly report summarizing the number of offenders under supervision; the amount of fines, statutory surcharges, and restitution collected; the number of offenders for whom supervision or rehabilitation has been terminated and the reason for the termination; and the number of warrants issued during the quarter, in such detail as the council may require.

(b) All records of any private corporation, private enterprise, or private agency contracting to provide services or of any county, municipality, or consolidated government entering into an agreement under the provisions of this article shall be open to inspection upon the request of the affected county, municipality, consolidated government, court, the Department of Audits and Accounts, or the council or its designee.

42-8-104.

(a) No private corporation, private enterprise, or private agency contracting to provide probation services under the provisions of this article nor any employees of such entities shall engage in any other employment, business, or activity which interferes or conflicts with the duties and responsibilities under contracts authorized in this article.

(b) No private corporation, private enterprise, or private agency contracting to provide probation services under the provisions of this article nor its employees shall have personal or business dealings, including the lending of money, with probationers under their supervision.

(c)(1) No private corporation, private enterprise, or private agency contracting to provide probation services under the provisions of this article nor any employees of such entities, shall own, operate, have any financial interest in, be an instructor at, or be employed by any private entity which provides drug or alcohol education services or offers a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services.

(2) No private corporation, private enterprise, or private agency contracting to provide probation services under the provisions of this article nor any employees of such entities shall specify, directly or indirectly, a particular DUI Alcohol or Drug Use Risk Reduction Program which a probationer may or shall attend. This paragraph shall not prohibit furnishing any probationer, upon request, with the names of certified DUI Alcohol or Drug Use Risk Reduction Programs. Any person violating this paragraph shall be guilty of a misdemeanor.

42-8-105.

(a) No county, municipality, or consolidated government probation officer or other probation office employee shall engage in any other employment, business, or activity which interferes or conflicts with the officer's or employee's duties and responsibilities under agreements authorized in this article.

(b) No county, municipality, or consolidated government probation officer or other probation office employee shall have personal or business dealings, including the lending of money, with probationers under the supervision of such probation office.

(c)(1) No county, municipality, or consolidated government probation officer or other probation office employee shall own, operate, have any financial interest in, be an instructor at, or be employed by any private entity which provides drug or alcohol education services or offers a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services.

(2) No county, municipality, or consolidated government that provides probation services through agreement under the provisions of this article nor any employees of such shall specify, directly or indirectly, a particular DUI Alcohol or Drug Use Risk Reduction Program which a probationer may or shall attend. This paragraph shall not prohibit furnishing any probationer, upon request, with the names of certified DUI Alcohol or Drug Use Risk Reduction Programs. Any person violating this paragraph shall be guilty of a misdemeanor.

42-8-106.

(a) All reports, files, records, and papers of whatever kind relative to the supervision of probationers by a private corporation, private enterprise, or private agency contracting under the provisions of this article or by a county, municipality, or consolidated government providing probation services under this article are declared to be confidential and shall be available only to the affected county, municipality, or consolidated government, the judge handling a particular case, the Department of Audits and Accounts, or the council or its designee.

(b) In the event of a transfer of the supervision of a probationer from a private corporation, private enterprise, or private agency or county, municipality, or consolidated government providing probation services under this article to the Department of Corrections, the Department of Corrections shall have access to any relevant reports, files, records, and papers of the transferring entity. All reports, files, records, and papers of whatever kind

relative to the supervision of probationers by private corporations, private enterprises, or private agencies under contracts authorized by this article or by a county, municipality, or consolidated government providing probation services under this article shall not be subject to process of subpoena.

42-8-107.

(a)(1) All private corporations, private enterprises, and private agencies contracting or offering to contract for probation services shall register with the council before entering into any contract to provide services. The information included in such registration shall include the name of the corporation, enterprise, or agency, its principal business address and telephone number, the name of its agent for communication, and other information in such detail as the council may require.

(2) Any private corporation, private enterprise, or private agency required to register under the provisions of paragraph (1) of this subsection which fails or refuses to do so shall be subject to revocation of any existing contracts, in addition to any other fines or sanctions imposed by the council.

(b)(1) All counties, municipalities, and consolidated governments agreeing or offering to agree to establish a probation system shall register with the council before entering into an agreement with the court to provide services. The information included in such registration shall include the name of the county, municipality, or consolidated government, the principal business address and telephone number, a contact name for communication with the council, and other information in such detail as the council may require.

(2) Any county, municipality, or consolidated government required to register under the provisions of paragraph (1) of this subsection which fails or refuses to do so shall be subject to revocation of existing agreements, in addition to any other sanctions imposed by the council.

42-8-108.

(a) The probation providers standards contained in this Code section shall be met by private corporations, private enterprises, or private agencies who enter into written contracts for probation services under the authority of Code Section 42-8-100 on or after July 1, 2006. Any private corporation, private enterprise, or private agency which fails to meet the standards established in this subsection on or after July 1, 2006, shall not be eligible to provide probation services in this state. All private corporations, private enterprises, or private agencies who enter into written contracts for probation services under the authority of Code Section 42-8-100 on or after July 1, 2006, shall:

- (1) Meet all requirements as outlined in subsection (b) of Code Section 42-8-102, relating to uniform contract standards;
- (2) Not own or control any finance business or lending institution which makes loans to probationers under its supervision for the payment of probation fees or fines; and
- (3) Employ at least one person who is responsible for the direct supervision of probation officers employed by the corporation, enterprise, or agency and who shall have at least five years' experience in corrections, parole, or probation services.

(b) The standards contained in this subsection shall be met by all counties, municipalities, or consolidated governments entering into written agreements to provide probation services to any court under the authority of Code Section 42-8-100 on or after July 1, 2006. Any county, municipality, or consolidated government which fails to meet the standards established in this subsection on or after July 1, 2006, shall not be eligible to provide probation services. All counties, municipalities, or consolidated governments which enter into written agreements to provide probation services under the authority of Code Section 42-8-100 on or after July 1, 2006, shall:

- (1) Register with the council;
- (2) Meet the requirements of subsection (c) of Code Section 42-8-102; and
- (3) Employ at least one person who is responsible for the direct supervision of probation officers employed by the governing authority who shall have at least five years' experience in corrections, parole, or probation services; provided, however, that the five-year experience requirement shall not apply to any such supervisor employed by a county, municipality, or consolidated government which was engaged in the provision of probation services on April 15, 2006."

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for purposes of promulgating rules and regulations; for all other purposes, this Act shall become effective July 1, 2006.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.